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Wayne



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Fillmore Field Office

95 East 500 North

Fillmore, UT 84631

<http://www.blm.gov/ut/st/en/fo/fillmore.html>



RECEIVED

JUN 23 2014

DIV. OF OIL, GAS & MINING

IN REPLY REFER TO:  
3809 (UTW02000)  
UTU-87042 (expired)  
UTU-87706 (pending)

June 19, 2014

CERTIFIED MAIL # 7012 3460 0000 6633 1820  
RETURN RECEIPT REQUESTED

### DECISION

Nephi Sandstone	:	
1250 North 200 South	:	43 CFR 3809 - Surface Management Plan
Nephi, Utah 84648	:	

### NOTICE OF NONCOMPLIANCE

I) March 2009 Notice of Noncompliance (NoN) Lifted – On March 25, 2009, you were sent a letter by Certified Mail in which the BLM cited you for noncompliance at this site. A BLM inspection on February 5, 2009 found that Nephi Sandstone had begun a mining operation at the site that included road improvement, drilling, blasting, screening, crushing, stockpiling, and removal of limestone from the site. That noncompliance order had not been lifted prior to this date, and any mining activity at this location was unauthorized.

The March 2009 NoN instructed you to provide a financial guarantee adequate for your Notice operations, as required in the Code of Federal Regulations (CFR) in 43 CFR §3809.605(d). It also instructed you to provide samples and data to the BLM in order to determine if your limestone quarry contained “common variety” material, subject to 43 CFR §3600, or “uncommon variety” material, subject to 43 CFR §3809, as provided in 43 CFR §3809.101. You provided the financial guarantee required at the time and the required information, and a BLM mineral examiner determined in July 2009 that the limestone at the Champlin Point quarry was “uncommon variety”, and therefore locatable under the mining laws, due to its end use. The March 2009 Notice of Noncompliance is therefore lifted.

II) June 2014 Notice of Noncompliance Issued – Routine field examinations conducted on April 9, 2014 and May 14, 2014 in Juab County, Section 33, Township 13 South, Range 04 West, Salt Lake Meridian; revealed unauthorized mineral extraction activity under Expired exploration Notice, UTU-87042, and Pending Plan of Operations, UTU-87706, on the Utah mining claim



UMC 407381. The surface estate at this site is private land, but all minerals were reserved to the United States at the time that the land parcel left Federal ownership. The corresponding Utah Division of Oil, Gas and Mining (UDOGM) case file number for this operation is S/023/0104.

On April 9, 2014, inspectors for UDOGM found evidence of recent mining activity at your site and reported their findings to the Bureau of Land Management (BLM). On May 14, 2014, your proposed Plan of Operations site at Champlin Point, Juab County, Utah was found by an inspector of the Bureau of Land Management (BLM) to have undergone large excavations and surface disturbances. Heavy equipment and mining debris were also present at the site. A large stockpile of crushed limestone, with a basal area of 6163 ft<sup>2</sup> and a height of approximately 20 feet, was also noted near the southeast corner of the site. The stockpile was not present at the time of a previous inspection on March 12, 2013.

Based on our inspections and file records, your activity is unauthorized. It is in violation of the United States Code of Federal Regulations (CFR) §3809 – Surface Management. Specifically, you are in violation of the following regulations:

43 CFR §3809.605(b) – Beginning any operations, other than casual use, when you do not have an authorized exploration Notice, as required by CFR §3809.21, or have not received approval for a plan of operations as required by CFR §3809.412. Your previous Notice at this location, UTU-87042, expired on September 30, 2013 and allowed no mining activities. Your Plan of Operations has not been approved by the BLM and cannot be approved until you are in compliance with all applicable State and Federal laws.

43 CFR §3809.605(d) – Beginning operations is not permitted prior to providing a financial guarantee that meets the requirements of this subpart. The State UDOGM reports that you have not paid your annual permit fee for the past five years, and that the current Financial Guarantee amount of \$19,700.00 for the exploration Notice is inadequate by State standards and should have been increased to at least \$25,000 by June 2, 2014. Also, as specified by 43 CFR §3809.202(3), the BLM will defer to State regulation of operations when a State environmental protection standard exceeds a corresponding Federal standard. Your failure to comply with State of Utah laws and regulations therefore is also in noncompliance with Federal regulations.

Under authority of 43 CFR §3809.601(a), you are hereby issued this Order of Noncompliance. Under authority of 43 CFR §3809.601(2)(ii), you are ordered to cease all operations at this site except for reclamation. Under authority of this subpart, the BLM may presume that an immediate suspension is necessary if you conduct Plan-level operations without an approved Plan of Operations or conduct Notice-level exploration operations without an authorized Notice.

If you do not comply with this order, the BLM may take further action against you pursuant to 43 CFR §3809.601(b) and/or the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce this order to prevent you from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts (see CFR §3809.604). Additionally, if you fail to adhere to the terms of this order, you may face arrest and trial under section 303(a) of the Federal Land Policy Management Act (43 U.S.C. 1733(a)). If convicted,



you will be subject to a fine of not more than \$100,000 or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense (see 43 CFR §3809.700).

Appeal of the Decision – If you do not agree and are adversely affected by this decision, in accordance with 43 CFR §3809.804, you may request that the BLM Utah State Director review this decision. If you request a State Director review, the request must be received in the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a Stay is granted by the State Director. Standards for obtaining a Stay are given below. If you request a Stay, you have the burden of proof to demonstrate that a Stay should be granted.

If the State Director does not make a decision concerning your request for review of this decision within 21 days of BLM's receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the BLM Utah State Office to determine when BLM receives the request for State Director Review. You have 30 days from the end of the 21 day period in which to file your notice of appeal with the IBLA (see procedures below). If you wish to bypass a State Director review, this decision may be appealed directly to the IBLA in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Fillmore Field Office (FFO) at 95 East 500 North, Fillmore, Utah 84631 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 for a Stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a Stay must accompany your notice of appeal. A petition for a Stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a Stay must also be submitted to each party named in the decision, to the IBLA, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a Stay, you have the burden of proof to demonstrate that a Stay should be granted.

#### Standards for Obtaining a Stay

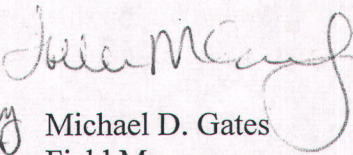
Except as otherwise provided by law or other pertinent regulation, a petition for a Stay of a decision pending appeal shall show sufficient justification based on the following standards:

- The relative harm to the parties if the stay is granted or denied
- The likelihood of the appellant's success on the merits
- The likelihood of immediate and irreparable harm if the Stay is not granted
- Whether the public interest favors granting the Stay



If you have any questions, please contact Duane Bays, Fillmore Field Office Natural Resource Specialist, at (435) 743-3115.

Sincerely,

  
Acting  
For Michael D. Gates  
Field Manager

Enclosures:

Form 1842-1

Photos

cc:

Paul Baker

UDOGM

1594 W North Temple Ste 1210

Salt Lake City, UT 84114

Opie Abeyta (UT-923)

Utah State Office/BLM

440 West 200 South, Suite 500

Salt Lake City, UT 84101-1345